NO. 21-8135

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ZACHARY CHANDLER- PETITIONER

VS.

UNITED STATES OF AMERICA- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

ZACHARY CHANDLER REG#10700-104

FEDERAL CORRECTIONAL COMPLEX USP#1, P.O. BOX 1033

COLEMAN, FLORIDA 33521

QUESTION PRESENTED

I.

WHETHER COUNSEL WAS INEFFECTIVE BECAUSE COUNSEL'S DEFENSE STRATEGY WAS TO HAVE CHANDLER WEAR PRISON ATTIRE IN ORDER TO GARNER THE JURY'S SYMPATHY?

II.

WHETHER PREJUDICE SHOULD BE PRESUMED UNDER THE SYMPATHY DEFENSE FOR COUNSEL WAS NOT GOING TO SUBJECT THE PROSECUTION CASE TO A MEANINGFUL ADVERSARIAL TESTING?

III.

WHETHER AN EVIDENTIARY HEARING WAS WARRANTED IN LIGHT OF COUNSEL'S DEFENSE STRATEGY OF SYMPATHY?

PARTIES OF THE PROCEEDING

Petitioner, Zachary Chandler, was the Defendant in the District Court for the Southern District of Florida and the Appellant before the Eleventh Circuit Court of Appeals. The United States of America, was the Plaintiff in the District Court for the Southern District of Florida, and the Appellee before the Eleventh Circuit Court of Appeals.

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OPINION BELOW

The Opinion of the Eleventh Circuit of Appeals is reported at 2022 U.S. App. LEXIS 4040 and is attached to this Petition as **Appendix G.** The Opinion of the District Court is reported at 2020 U.S. Dist. LEXIS 195283 and is attached to this Petition as **Appendix D.**

JURISDICTION

The Opinion of the Eleventh Circuit Court of Appeals was entered on February 14, 2022. Chandler subsequently filed a Petition for Rehearing and Rehearing En Banc and the Eleventh Circuit denied the Petition on April 11, 2022. **Appendix J** The Final Judgment was entered on April 19, 2022 **Appendix K.** This Court has jurisdiction to review this case under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

Amendment V "No person shall be without Due Process of Law."
Amendment VI "In all criminal prosecution, the accused shall have the Assistance of Counsel for his Defense."

STATEMENT OF COURSE AND PROCEEDING

In December 2015, a Southern District of Florida grand jury returned a 17-count indictment, charging Chandler with eight count of Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a)(Couts 1, 3, 5, 7, 9, 11, 13, and 15), eight accompanying counts of using and brandishing (and, in one case, discharging) a firearm during and in relation to the Hobbs Act robberies, in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii) and (iii)(Counts 2, 4, 6, 8, 10, 12, 14, and 16), and count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g) (Count 17)(DE 12).

On the morning of trial, in January 2016, Chandler arrived wearing his prison attire, prompting the district court to ask: "Why is Mr. Chandler not clothed?" (DE 58:2). Chandler's counsel answered that the had advised Chandler to wear his prison attire "because sometimes it works to his benefit" (DE 58:3). The district court offered Chandler the "opportunity to change into some clothing that would not alert the jury to the fact that [he was] currently in custody," which Chandler denied (DE 58:3).

Chandler then announced his intention to plead guilty to Counts 7, 15, and 16-the ones "he did"-and proceed to trial on the remaining 14 counts- the ones "he didn't do" (DE 58:3-7). That way, as part of his sympathy strategy, Chandler's trial

counsel could "explain to the jury that the he's plead [sic] guilty to those counts," and leave it "to the jury to decide if he's right or wrong on the ones he plead not guilty to" (DE 58:5-7). After realizing that Count 17 might carry a 15-year minimum sentence, however, Chandler changed his mind about pleading guilty to these three counts and opted instead "to go to trial on everything" (DE 58:11-12).

Before empaneling the jury, the district court again sought the reasoning behind Chandler's "decision to remain in the prison attire" (DE 58:12). In response, Chandler's counsel further his strategy. (DE 58:12-14) Following his counsel's explanation, Chandler reaffirmed his desire to remain in his prison attire, and the government expressed no opposition to his decision (DE 58:14)

After the parties returned with a singed plea agreement and factual proffer, the district returned with a signed plea agreement and factual proffer, the district court conducted a plea colloquy. Chandler indicated that he had reviewed the indictment and plea agreement, understood them, discussed them with his counsel, and expressed full satisfaction with the advice and representation he received from counsel (DE 58:32-33). He also confirmed that the plea agreement represented his complete agreement with the government, that no one forced or threatened him to enter into the agreement, and that his counsel answered

all of his questions about the agreement.

More than a month and a half later, Chandler moved to withdraw his guilty plea (DE 55). He argued that he agreed to plea guilty based on initially mistaken advice of counsel about the penalties associated with Count 17, and "under the pressure" of a voir dire panel" about to enter the courtroom." The government opposed Chandler's motion (DE 59) The District Court denied Chandler's motion (DE 61; DE 79).

The District Court later sentence Chandler to 480 months' imprisonment. Chandler appealed, challenging the district court's denial of his motion to withdraw his guilty plea, its denial of his motion to dismiss, and its application of a two-level sentencing enhancement for physically retraining his victims during the robberies (DE 75). The Eleventh Circuit affirmed the conviction and sentence. See United States V. Chandler, 699 Fed. Appx 863 (11th Cir. 2017). This Court denied Certiorari. 138 S. Ct. 1281 (2018).

About a year later, Chandler filed a pro se Motion to Vacate his conviction and sentence under 28 U.S.C. § 2255 based on Ineffective Assistance of Counsel. The Government responded in opposition. Chandler subsequently replied. The District Court denied Chandler's Motion To Vacate and refuse to issue a certificate of appealability.

The Eleventh Circuit granted Chandler's Petition for a COA, for the following issues: 1. Whether Chandler has shown that trial counsel was ineffecitve for pursuing a defense strategy intended to evoke the jury's sympathy; and 2. Whether Chandler was entitled to an evidentiary hearing before the district court.

On February 14, 2022, the Eleventh Circuit affirmed the District Court's ruling. Chandler subsequently filed a Petition for Panel Rehearing and Rehearing En Banc -which was denied.

STATEMENT OF FACT

All of the facts relevant to this appeal are set forth above in the Course of Proceedings.

REASON FOR GRANTING PETITION

I.

WHETHER COUNSEL WAS INEFFECTIVE BECAUSE COUNSEL'S DEFENSE STRATEGY WAS TO HAVE CHANDLER WEAR PRISON ATTIRE IN ORDER TO GARNER THE JURY'S SYMPATHY?

In Shakespeare's play Julis Caesar (Act III, Scene 2). Marc Antony deliver a speech, in an attempt to gain the audience sympathy to have Brutus punish for his action:

"Friends, Romans, Countrymen, lend me your ears;
I come to bury Caesar, not praise him.
The evil that men do lives after them;
The good is oft interred with their bones;
So let it be with Caesar. The noble Brutus
Hath told you Caesar was ambitious;
If it were so, it was a grievous fault,
And grievously hath Caesar answered it.
Here under leave of Brutus and the rest,-
For Brutus is an honorable man;
So are they all, all honorable men,-
Come I to speak in Caesar's funeral,
He was my friend, faithful and just to me:
But Brutus say he was ambitious;
And Brutus is an honorable man.
He hath brought many captives to Rome,
Whose ransom did the general coffers fill:
Did this is Caesar seem ambitious?
When that the poor have cried, Caesar hath wept;
Ambition should be made of sterner stuff:
Yet Brutus say he was ambitious;
And Brutus is an honorable man.
You all did see that the Lupercal
I thrice presented him a kingly crown,
Which he did thrice refuse: was this ambition?
Yet Brutus says he was ambitious;
And, sure, he is an honorable man.

I speak not to disprove what Brutus spoke,
But here I am to speak what I do know.
You all did love him once, not without cause;
What cause withholds you then to mourn for him?
O judgment, thou art fled to brutish beasts,
And men have lost their reason. Bear with me;
My heart is in the coffin there with Caesar
And I must pause till it come back to me."

Would this Court accept this form of argument to be presented before the jury? Is this sound trial strategy? On the contrary, would the prosecution be allowed to do the same and have every defendant suffer the same fate as described in John 19:5-7; 12-26 ?

"Then Jesus came out, wearing the crown of thorns and the purple robe. And Pilate said to them, "Behold the Man!" Therefore, when the chief priests and officers saw Him, they cried out, saying "Crucify Him, crucify Him!" Pilate said to them, "You take Him and crucify Him, for I find no fault in Him." The Jews answered him, We have a law, and according to our law He ought to die, because He made Himself the Son of God."

...

"From then on Pilate sought to release Him, but the Jews cried out, saying, "If let this Man go, you are not Caesar's firned. Whoever makes himself a king speaks against Caesar." When Pilate therefore heard that saying, he brought Jesus out and sat down in the judgment seat in a place that is called The Pavement, but in Hebrew, Gabbatha. Now it was the Preparation Day of the Passover, and about the sixth hour. And he said to the Jews, "Behold your King!" But they cried out, "Away with Him, away with Him! Crucify Him!" Pilate said to them, "Shall I crucify your King?" The chief priests answered, "We have no king but Caesar!" Then he delivered Him to them to be crucified. So they took Jesus and led Him away."

If such example was allowed in our judicial system, could it be called the Court of law? Or, is the jury permitted to put aside their oath and based their decision on sympathy? On Valentine's Day this year, the Eleventh Circuit choose the latter. In creating an unnecessary circuit split, the Eleventh Circuit ruled: "[C]ounsel proposed strategy of envoking the jury's sympathy was not deficient." Op. Slip. 3

The Eleventh Circuit based their decision on premises (1) misstating the facts; (2) misinterpreted this Court opinion in Estelle V. Williams, 425 U.S. 501, 502 (1976); (3) Ignoring it's own law; and (4) ruling against the sister circuit on this issues.

Chandler aver he will address all four premises.

(1) Misstating the Facts:

In reading the Eleventh Circuit opinion, the panel held: "[C]ounsel's initial strategy of conceding guilt on certain charges to lead the jury toward leniency on the remaining charges has been affirmed by this Court. See Darden V. United States, 708 F.3d 1225, 1230 (11th Cir. 2013) ... And the record does not support Chandler's contention that, after deciding it was necessary to proceed to trial on all the charges, his counsel intended to advise the jury that Chandler was guilty of every crime charged in the indictment. Rather, counsel simply informed

the Court that, after realizing the sentencing exposure of the original plea proposal, Chandler would instead proceed to trial "on everything." Op. Slip 3-4

Chandler avers, the first paragraph contradicts the second. While, the Eleventh Circuit is correct that "Counsel's initial strategy was to concede guilt on certain counts to build credibility on the remainder counts. The Eleventh Circuit ignores counsel decision to change his original strategy -which Counsel clearly explained before the District Court. See Appendix I

(A) "Concession Strategy" 5:10-13, 19-22

> THE COURT: And regarding Mr. Chandler's intent to enter pleas of guilty to Count 15, 16 and Count 7, is there a Factual Proffer that's going to accompany those pleas of Guilty? ...
>
> MR. SPIVACK: Well, I want to -- at some point, we're going to be -- the Defense wants to explain to the jury that he's plead guilty to those counts. So I don't -- that's why I anted to do that before we picked a jury
>
> 6:25, 7:1-17
>
> THE COURT: And the Defendant is conceding that these counts are inextricably intertwined with the other counts of this case that would necessitate -- the Government, if it chooses to prove the elements of the other counts, would need to necessarily bring out the facts that beat on Counts 15, 16, and 7.
>
> MR. SPIVACK: Correct, Judge. I mean, it's -- he's pleading guilty to what he did. He's pleading not guilty to what he didn't do, and **it's up to the jury to decide if he's right or wrong on the ones he plead not guilty to.**

THE COURT: No. I understand that, Mr. Spivack. But it's this Court's responsibility to determine the legal effect of those pleas go guilty. So with the understanding that the Government will still be able to elicit testimony regarding those facts, then certainly the Court will accept Mr. Chandler's pleas of guilty.

MR. SPIVACK: Yes, Your Honor. We're fine with that. We agree with that.

(B) "The Sympathy Strategy" -after the Court's Recess

11:20-25, 12:1-23, 13:25, 14:1-15

MR. SPIVACK: "Thank You. Thank You, Your Honor. We're ready to proceed. Judge, I talked to my client. The Government brought something to my attention that, **quite frankly, I hadn't even though of because when you add up all the minimum mandatories.** I completely forgot the very last charge in possession of a firearm by a convicted felon, and I believe he qualifies as an armed career criminal, or it could be argued at least that he's -- he qualifies as an armed career criminal under that. That's another 15 years. So, [Chandler] can't plead ... to [Count 15, 16 and 7] - DE-58 5:10-25; 6:1-25; 7-17- ... So, were going to have to go to trial on everything, Judge."

THE COURT: "All right. Then let me address the decision to remain in the prison attire. Mr. Spivack, what is the reasoning behind that sir?"

MR. SPIVACK: "I guess I have to reveal part of my - Judge, it's a trial strategy move. ... So sometimes when a defense attorney is facing a case when the a defense attorney is facing a case when the evidence is overwhelming, and you've going to try to argue various issues, **I think the jury is more comfortable if they look over and they see [Chandler] is jail attire, and think: "Well, he's going to jail anyway. Let's maybe find him not guilty of certain things and find him guilty of other things."** ... So we got to do some things that maybe are a little different. One things I thought was if he sitting here in his jail

attire, and if the jury sees that nobody was hurt, **maybe they'll cut him a break on some of the charges."**

THE COURT: "Mr. Chandler, you've now heard Mr. Spivack's statement as to why he believes you should remain in your prison attire. In that what you want to do, sir?"

THE DEFENDANT: "Yes, I might as well stay."

THE COURT: "I'm sorry?"

THE DEFENDANT: "Yes."

THE COURT: "Is that what you want to do, sir?"

THE DEFENDANT: "Yes, ma'am."

THE COURT: "All right. Then the Government has no oppoisition; is that correct?"

MS. ANTON: **Yes, Your Honor. NO OPPOSITION."**

Chandler avers, to go to trial "on everything" is very simple in this context: "There will be no concession on Count 15, 16, and 7 to built credibility on the remaining counts. Therefore, Darden is inapplicable. See id at 1230 "[F]or starters, the argument fails to come to grips with the fact that defense counsel conceded obvious guilt as to the July 3 robbery for the express purpose of preserving credibility with the jury to focus on vigorously defending the June charges and therefore potentially save Darden from a 25-year increase in prison time."

Therefore, the Eleventh Circuit was incorrect on this premises.

(2) Misinterpreted Estelle V. Williams, 425 U.S. 501, 502 (1976)

In Williams, this Court stated -in passing: "[T]he cases shows, for example, that it is not uncommon defense tactic to produce the defendant in jail clothes in hope of eliciting sympathy from the jury." Based on this one sentence, the Eleventh Circuit held it was proper for Counsel to present this argument before the Court.

Chandler avers, the problem with the Eleventh Circuit's finding is, it misinterpret Williams'[1] intent. The Eleventh Circuit structured their opinion in a way to appear, as this Court approved "it was sound trial strategy to have a defendant dress in jail attire to gain the jury sympathy." But, this was never this Court's intention, and ironically, the Eleventh Circuit knew this. See United States V. Steele, 733 Fed. Appx. 472 (11th Cir. 2018)("The presumption of innocence, a basic component of the right to a fair trial, is impaired when the defendant is compelled to wear prison or jail clothing during trial, because such clothing serves as a constant reminder of

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1. "Prohibit[ing] requiring a defendant to appear before a jury in prison clothing because "the constant reminder of the accused's condition implicit in such distincitive identifiable attire may affect a juror's judgment" and is "likely to be a continuing influence throughout the trial." id at 504-05

the accused's condition, which is likely judgment of the defendant."); United States V. Harris, 703 F.2d 508, 509-11 (11th Cir. 1983)("A defendant's due process rights were violated where he was compelled wear prison clothing during voir dire"); United States V. Villabuna-Garnica, 63 F.3d 1051, 1058 n.6 (11th Cir. 1996)(for example, we have noted that the jury's knowledge of defendant's pre-trial incarceration "may lead the jury to speculate that the defendant is particularly dangerous.")

The question Chandler must asked: "What changed?" For, how was it sound trial strategy for counsel to strip Chandler of his innocences? Although, there is no such panel of "competent counsel" which decides on the actions of a counsel and deems it competent or not. Guidance can be found in this Court's opinion in Mitchell V. Kemp, 483 U.S. 1026 (1987), "an attorney's decision to advance a defense that is wholly unfounded in law, combined with a failure to investigate the merit of accepted and persuasive defense, cannot be characterized as "sound trial strategy.'"

Therefore, the Eleventh Circuit was incorrect on this premises.

(3) Ignoring it's own law

In Provenzano V. Singletary, 148 F.3d 1237, 1332 (11th Cir. 1998), the Eleventh Circuit held: "Strategic choice made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choice made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgment support the limitations of investigations."

In reviewing the law of the Eleventh Circuit, it clearly held: "[Y]our decision must be based on the evidence presented here. You must not be influenced in anyway be either sympathy for ... the defendant." 11th Cir. Jury Inst. 2.1 See Saffle V. Parks, 494 U.S. 484 (1990)("an instruction telling they jury to avoid any influence of sympathy ... was constitutional.")

This instruction was going to be given to the jury before they deliberate on the Government's evidence. And therefore, they was NOT going to think "Well, [Chandler] going to jail anyway. Let's maybe find him guilty to certain things and find him guilty of other things?" See Parker V. Randolph, 442 U.S. 62 at 75 n.7 (1975)(the premise upon which the system of jury trial functions is that juries can be trusted to follow the trial court's instructions). As a matter of fact, Chandler submits the Government was going to exploit this very language during their closing argument, which is the reason they had no opposition to counsel's case-in-chief.

Moreover, the Eleventh Circuit is not the only circuit to instruct they jury that they must avoid any influence of sympathy. Several circuit has embed similar language in their instructions. See First Circuit's Jury Inst. 3.01; Third Circuit's Jury Inst. 3.01; Fifth Circuit's Jury Inst. 1.01; Sixth Circuit's Jury Inst. 1.02; Seventh Circuit's Jury Inst. 10.2; Eight Circuit's Jury Inst. 1.01; Ninth Circuit's Jury Inst. 1.1; Tenth Circuit's Jury Inst. 1.04

More importantly, this Court has ruled that a instruction advising the jury to avoid any influence of sympathy is constitutional. See California V. Brown, 479 U.S. 538 (1987). In Brown, this Court held, "The jury was told not to be swayed by "mere sentiment, conjecture, sympathy, passion, public opinion or public feeling." ... respondent reads the instructions as if solely cautioned the jury not to be swayed by "sympathy." Even if we were to agree that a rational juror could phrase the instruction in such a hypertechnical manner, we would disagree with both respondent's interpretation of the instruction and his conclusion that the instruction is unconstitutional. By concentrating on the noun "sympathy," respondent ignores the crucial fact that the jury was instructed to avoid basing its decision on mere sympathy. Even a juror who insisted on focusing on this one phrase in the instruction would likely interpret the phrase as an admonition to ignore emotional

responses that are not rooted in the aggravating evidence introduce during the penalty phrase."

Nevertheless, the Eleventh Circuit don't understand the vacuum it created. This ruling has opened the door to: Defense Counsel telling the jury to ignore the Government's evidence and simply finding him/her not guilty based on sympathy. And once juries starts to do so, the government should not cry foul. See Gardner V. Florida, 430 U.S. 349 (1977)("It is of vital importance to the defendant and to the community that any decision [of guilt] be, and appear to be based on reason rather than caprice or emotion.")

Therefore, the Eleventh Circuit premises is incorrect.

(4) Creating a Circuit Split by ruling against the Sister Circuit on this issue

In Toro V. Fairman, 940 F.2d 1065 (7th Cir. 1991), the Seventh Circuit gave a ruling based on this exact issue. It held: "[T]he spectrum of counsel's legitimate tactical choice does not include abandoning a client's only defense in the hope that a jury's sympathy will cause them to misapply or ignore the law they have sworn to follow." See also Klotz V. Sears, Roebuck & Co., 267 F.3d 53 (7th Cir. 1959), where the Seventh Circuit explained: "Appeals to sympathy or charitable considerations falls within the class of argument condemned

An appeal to the jury to put themselves in plaintiff's place is improper. Sympathy for suffering and indignation at wrong are worthy sentiments, but the are not safe visitors in the courtroom, for they may blind the eyes of Justice. They may not enter they jury box, nor be heard on the witness stand, nor speak too loudly through the voice of counsel." The Tenth Circuit held in Duvlia V. Reynolds, 139 F.3d 768, 795 (10th Cir. 1998), "We do not condone comments encouraging the jury to allow sympathy, sentiment, or prejudice to influence its decision." The D.C. Circuit held in Law V. Virginia Stage Lines, Inc., 444 F.2d 990, 994 (D.C. Cir. 1971)("The law in its wisdom has invested trial judges with power to correct juries who base their verdicts on consideration not embodied in the evidence.")

The Ninth Circuit held in In re Gustafson, 650 F.2d 1017 (9th Cir. 1981)("The Court: ... You cannot, ladies and gentlemen, base a verdict based on any sympathy whatsoever. The case and the verdict you render must be based on the facts and only the facts, nothing else.").

Therefore, the Eleventh Circuit premises is incorrect.

Accordingly, based on the aforementioned, this Honorable Court should exercise it's judicial discretion under Supreme Court Rule 10(a) and GRANT Writ of Certiorari on this matter.

II.

WHETHER PREJUDICE SHOULD BE PRESUMED UNDER THE SYMPATHY DEFENSE FOR COUNSEL WAS NOT GOING TO SUBJECT THE PROSECUTION CASE TO A MEANINGFUL ADVERSARIAL TESTING?

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." The Supreme Court teaches us that the criminal defendant's right to counsel "is the right to the effective assistance of counsel." United States V. Gonzalez-Lopez, 548 U.S. 140 (2006)(emphasis added)(internal quotation marks & citation omitted). The right to effective assistance of counsel "is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial." United States V. Cronic, 466 U.S. 648 (1984).

Because the limits of the right finds its source Due Process Clause's guarantee to a fair trial, "[c]ounsel cannot be 'ineffective' unless his mistakes have harmed the defense (or, at least, unless it is reasonably likely that they have)." Gonzalez-Lopez, 548 U.S. at 147. To determine whether counsel's performance at trial fell below the level of effectiveness the Sixth Amendment usually requires courts to apply the familiar two-pert test established in Strickland V. Washington, 466 U.S. 688 (1984)

First, the defendant must show that his lawyer's performance was "deficient." To do this, the defendant must overcome "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," and show that it was objectively unreasonable. Id. at 687-89. Second, the defendant must show that the lawyer's deficiency cause prejudice to his defense-i.e., there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." id at 694.

The same day the Court adopted the Strickland framework, it also made clear in Cronic that Strickland doesn't apply where the accused is denied counsel at a critical stage of trial or "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing." Cronic, 466 U.S. at 659. When either occurs, the reviewing court presumes the defendant was prejudiced and his conviction is in turn vacated.

At the outset, Chandler explained his decision whether or not to accept a plea offer is a critical stage of the prosecution at which the Sixth Amendment right to counsel attaches to. Iowa V. Tovar, 541 U.S. 77 (2004). In reviewing Counsel's statement on the record, it clearly shows he was not going to "subject the prosecution's case to a meaningful adversarial testing." DE-58 12:17-23; 14:1-4

What escapes the lowers courts, was: The Jury Instruction forbid the jury to "decide that he is going to jail anyway, because of this, let us find him guilty on certain crimes." See 11th Cir. Jury Inst. 10.2, which states in part: "[I]f you find the Defendant guilty or not guilty on one crime, that must not affect your verdict for any other crime ... **You must never consider punishment in any way to decide whether the Defendant is guilty."** See United States V. Jean-Charles, 696 Fed. Appx. 405 (11th Cir. 2017)(citing Shannon V. United States, 512 U.S. 573 (1994)).

This meant, the jury could not have decided "well, he's going to jail anyway. Let's maybe find him not guilty of certain things and find him guilty of other things." To do so, would violate the jury instruction and their own sworn duty to uphold the law. See Smith V. Wainwright, 777 F.2d 609, 616 (11th Cir. 1985)("Where, however, a petitioner demonstrates that circumstances surrounding his representation give rise to a presumption of prejudice, he will prevail")(citing Cronic, at 657 n.20); Hunter V. Moore, 304 F.3d 1066, 1070 (11th Cir. 2002) ("[D]enial of counsel at a critical stage ... warrants reversal without a specific showing of prejudice").

Moreover, Counsel -a seasonal trial attorney- knew or shown that this was a lazy strategy and felt that the Chandler was going to "jail anyway" so why do anytime of work?

This render counsel ineffective and thus the misadvice given to Chandler could not make his plea of guilt knowingly, intelligently, and voluntary. See Stano V. Dugger, 921 F.2d 1125, 1151 (11th Cir. 1991)(When a defendant has pled guilty, he can show deficient performance by demonstrating that his counsel did not provide him "with an understanding of the law in relation to the facts, so that [he] may make an informed and going to trial.'"); Cooper V. United States, 660 Fed. Appx. 730 (11th Cir. 2016)(stating that strategic choices such as whether to accept or reject a plea offer, "must be based on a through investigation of the law and facts relevant to the plausible options before the defendant.")

Nevertheless, has it not been for the misadvice of counsel-through his sympathy strategy, there is a reasonable probability that Chandler would not have taken a plea of guilt and proceeded to trial. Therefore, Chandler was prejudice by counsel's ineffectiveness, which denied him of a right to a fair trial and to effective counsel.

Accordingly, based on the aforementioned, this Honorable Court should exercise it's judicial discretion and GRANT Writ of Certioriari on this matter.

III.

WHETHER AN EVIDENTIARY HEARING WAS WARRANTED IN LIGHT OF COUNSEL'S DEFENSE STRATEGY OF SYMPATHY?

Under 28 U.S.C. § 2255(b), an evidentiary hearing must be held, unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." In Aron V. United States, 291 F.3d 708, 714-15 (11th Cir. 2002), The Eleventh Circuit held, "[I]f the Petitioner alleges facts that, if true, would entitle him to relief, then the district court should order an evidentiary hearing and rule on the merits of his claim."

In reviewing the record, nothing in the files and record of the case conclusively show that the prisoner is entitled to no relief -as mandated by statute. The Eleventh Circuit over look the fact, the Government was not Chandler's trial counsel or had inside information to Chandler's defense. Chandler pointed out to the Eleventh Circuit, "if the Government is correct in their assessment that the sympathy was only "part of his trial strategy," than what was the other part of Counsel's trial strategy?"

The Eleventh Circuit side-step the requirement in the statute by stated "the record showed that [Chandler] was entitled to no relief due to the substantial evidence of his guilt, including

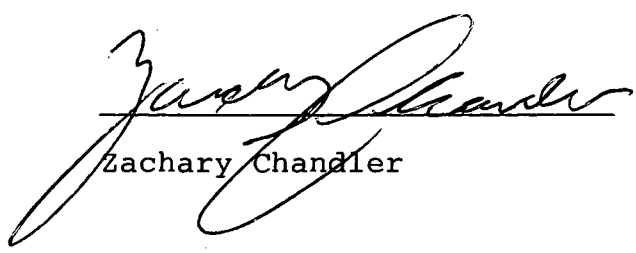
video footage from the robberies." The problem with the Eleventh Circuit's analysis is, "this was not what the statute required."

Nevertheless, the Government failed to present an affidavit from counsel to show that he had another defense. So, without such affidavit, the Government was shooting from the hip and guessing. Therefore, the District Court should have held a evidentiary hearing.

Accordingly, this Court should GRANT a Writ of Ceriorari on this issue.

CONCLUSION

WHEREFORE, in the great interest of justice, Chandler pray this Court will Grant a Writ of Certiorari.



Zachary Chandler